

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795		Hearing Date/Agenda Number P.C. 2/23/05    Item
<h1>STAFF REPORT</h1>		File Number CP05-001 & V05-001
		Application Type Conditional Use Permit and Development Exception
		Council District 3
		Planning Area Central
		Assessor's Parcel Number(s) 264-39-019
PROJECT DESCRIPTION <span style="float: right;">Completed by: Lee Butler</span>		
Location: Northwest corner of Willow and Locust Streets		
Gross Acreage: 1.1                      Net Acreage: 1.1                      Net Density: n/a		
Existing Zoning: R-2 Residence                      Existing Use: Parochial School Building (Sacred Heart)		
Proposed Zoning: No Change                      Proposed Use: Cellular antennas in proposed bell tower & associated equipment		
GENERAL PLAN		Completed by: FLB
Land Use/Transportation Diagram Designation Public/Quasi Public		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING		Completed by: FLB
North:	Single-family and duplex residences	R-2 Residence
East:	Single-family and duplex residences	R-2 Residence
South:	Retail / commercial	CP Pedestrian Commercial
West:	Single-family and duplex residences	R-2 Residence
ENVIRONMENTAL STATUS		Completed by: FLB
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete
FILE HISTORY		Completed by: FLB
Annexation Title: Original City		Date: March 27, 1850
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> Approval  <input type="checkbox"/> Approval with Conditions  <input type="checkbox"/> Denial  <input type="checkbox"/> Uphold Director's Decision </div> <div> Date: _____ </div> <div> Approved by: _____  <input checked="" type="checkbox"/> Action  <input type="checkbox"/> Recommendation </div> </div>		
APPLICANT  Nextel of California, Inc. 1255 Treat Boulevard, Suite 800 Walnut Creek, CA 94596	OWNER  Roman Catholic Welfare Corp. of San Jose 900 Lafayette St., Ste. 301 Santa Clara, CA 95050	DEVELOPER  Nextel Communications

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PUBLIC AGENCY COMMENTS RECEIVED

Completed by: FLB

Department of Public Works

None received.

Other Departments and Agencies

Fire Department.

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GENERAL CORRESPONDENCE

None received.

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ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Nextel of California, is requesting a Conditional Use Permit to allow the installation of up to twelve wireless communication antennas within a new, approximately 49-foot tall bell tower on the Sacred Heart church school building and the placement of a 230 square foot equipment shelter outside the building. The Zoning Ordinance requires a Conditional Use Permit for installation of wireless communication antennas in the R-2 Residence District. A Development Exception is also required for church bell towers or wireless communication antennas that exceed the maximum height of 35 feet in the R-2 Residence Zoning District. No standby/backup generators are proposed. The same proposal was approved on November 14, 2001 under file numbers CP01-081 & V01-029. The approvals were never implemented and have since expired.

The antenna facility is proposed to be located on the Sacred Heart church site at the northwest corner of Willow and Locust Streets. The site is bounded by single family and duplex residences to the north, west, and east, and retail uses across Willow Street to the south.

In 1996, Planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pacemakers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennas.

**Project Description**

The project proposes twelve narrow panel wireless communication antennae within a proposed 49-foot tall bell tower located at the southern end of the church school building. The bell tower is an extension of an elevator shaft, which was installed to comply with disabled access requirements. An attached photographic simulation has been provided to illustrate the appearance of the building before and after installation of the proposed bell tower and antennae. This project also includes a Development Exception

to allow the proposed antennae and bell tower to exceed the 35-foot maximum height limit of the R-2 Residence Zoning District to a height of approximately 49 feet.

The equipment facility will be located within a proposed 230 sq.ft. (10' x 23') equipment shelter located outside the southeast corner of the church school building, facing Locust Street. A new, eight-foot-high redwood fence would screen the ground level equipment.

## **ENVIRONMENTAL REVIEW**

The proposed project is exempt from environmental review under Section 15301 of the California Quality Act Guidelines because it consists of a minor alteration of an existing structure involving negligible or no expansion of use.

## **GENERAL PLAN CONFORMANCE**

The proposed wireless communication facility at an existing church / parochial school is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Public/Quasi Public because the category is used to designate lands used by some private entities, including public utilities, and the facilities of any organization involved in the provision of public services such as gas, water, electricity, and telecommunications. In addition, such institutions as churches, private schools, and private hospitals are appropriate in this designation.

## **ANALYSIS**

The key issues analyzed for the proposed project are consistency with (1) City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities and (2) the Development Exception criteria.

### ***City Council 6-20, Land Use Policy for Wireless Communication Facilities***

The proposed project is consistent with the Council Policy in regards to location, visual impact, and setback from residential uses. The Policy strongly encourages the location of new antennas on existing structures, specifies that they be architecturally integrated with the existing structure, and recommends that they be set back from residential uses at least 35 feet. The Policy further specifies that ancillary equipment must be adequately screened and that the equipment shall not displace required parking.

In conformance with these requirements, the antennae are to be located within a proposed bell tower. The antennae would be located approximately 70 feet from existing residential uses. The antennae will be completely screened from view by being located in the proposed bell tower. The equipment facility will be located next to the school building and will not remove required parking. The Policy specifically encourages proposals such as the subject project when it states that “the construction of new architectural elements (e.g. new roof structures or parapets, clock towers, or church steeples) should be considered as a means of providing additional height and of camouflaging antennas.” Based on this analysis, staff concludes that the proposed project conforms in every respect to the Council Policy and is compatible with the surrounding neighborhood.

***Development Exception***

In Section 20.100.1300(2)(a)(2), the Zoning Ordinance identifies a specific height exception for church steeples and wireless communication antennas and associated structures. The proposed project will exceed the height limit of 35 feet in the R-2 Residence Zoning District by approximately 14 feet. Technical necessity requires the height in order to provide appropriate service. The approval of this facility, by inclusion of co-location requirements, would reduce the likelihood of future proposals for monopoles or tall building mounted antenna in this area. The new bell tower is an appropriate addition to the existing church school building, which helps to visually integrate the building's new elevator shaft into the existing building. The proposed design will ensure that the project will not impair the utility or value of adjacent properties, the general welfare of the neighborhood, or the integrity of the zoning district in which the subject property is situated. Therefore, Staff believes an exception to the R-2 Residence District height limit of 35 feet is appropriate.

**PUBLIC OUTREACH**

Notices of the public hearing for this project were sent to all property owners within 500 feet of the subject property. The Planning Commission Agenda is posted on the City of San José Planning Divisions' website, which includes a copy of the staff report. Staff has been available to discuss the project with members of the public.

**RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public/Quasi Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-2 Residence Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review requirements.
4. Single-family detached and duplex residential uses surround the subject site, with retail uses to the south across Willow Street.
5. The project proposes to install twelve wireless communications antennas within a proposed bell tower at the south end of the church school building on the Sacred Heart Church site at the northwest corner of Willow and Locust Streets.
6. The ancillary equipment is proposed to be located behind an eight-foot-tall redwood fence at the southeast corner of the existing building. This placement will not remove required parking.

7. The wireless communications antennae will be located within a proposed bell tower approximately 49 feet in height.
8. The Zoning Ordinance includes a provision to allow a Development Exception to be granted for church steeples to exceed the height limit of 35 feet.
9. The proposed height of 49 feet is technically necessary in order to provide appropriate network coverage and to screen the antennae in a way that is visually compatible with the existing building.
10. The permit contains requirements to allow the co-location of other future antenna uses on the proposed structure.
11. The wireless communication antennas are proposed to be located approximately 70 feet horizontally from adjoining single-family and duplex residences.
12. The same proposal was approved on November 14, 2001 under file numbers CP01-081 & V01-029. The approvals were never implemented and have since expired.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project complies with the applicable criteria of City Council Policy 6-20, Land Use Policy for Wireless Communications Facilities.
4. The proposed project is in compliance with the California Environmental Quality Act.
5. The proposed antenna facility is compatible with the surrounding neighborhood.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise

required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.
4. The requested Exception will not impair:
  - a. the utility or value of adjacent property or the general welfare of the neighborhood, and
  - b. will not impair the integrity and character of the zoning district in which the subject property is situate.

The increase in bell tower height to 49 feet will not interfere with the light and air available to nearby properties, and is in keeping with the architectural character of the existing structure.

In accordance with the findings set forth above, a Conditional Use Permit and Development Exception to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS PRECEDENT

This Conditional Use Permit and Development Exception shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Permit Adjustment Required.** Prior to the issuance of Building Permits, the applicant shall submit a Permit Adjustment that addresses the following issues:
  - a. Copper shall not be used as an exterior building material, and the applicant shall submit plans showing new materials that match the existing gutters and downspouts using a non-copper material that does not pose a hazard as a pollutant.

- b. The applicant shall submit details of the proposed cable tray shown on the elevations. The details shall specify materials, width, and depth of the proposed cable tray. Should the Director of Planning, Building, and Code Enforcement find the proposed tray incompatible, incorporation of the cables into the existing elevator shaft may be required, assuming adequate space exists in the shaft.

Approval of said Permit Adjustment is subject to the sole discretion of the Director of Planning, Building, and Code Enforcement.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Highway 87/Wilow, Site Number CA-2241-A," dated February 11, 2002, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Colors and Materials.** All colors and materials are to be those specified on the approved plan set, with the exception of the proposed copper downspouts as noted in the above conditions precedent.
5. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, CP05-001/V05-001, shall be printed on all construction plans submitted to the Building Division.
  - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - c. *Permit Adjustment.* A Permit Adjustment shall be approved in accordance with the above Concurrent Condition number 2.
6. **Fire Department Compliance.** The applicant shall comply with all Fire Department
7. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
8. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements associated with this permit within 30 days.

9. **Co-location.** The owner(s) and operators of the proposed antenna support structure shall allow the co-location of PCS antennas for other providers. The Director of Planning shall review any changes to the approved design necessary to accommodate other providers.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment must be approved prior to the expiration of this Permit.
  2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Chapter 20.100.190 of Title 20 of the San José Municipal Code it finds:
    - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
    - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
    - c. The use as presently conducted creates a nuisance.
- c: Building Division (2)  
Engineering Services  
Nextel Communications, 155 Treat Boulevard, Suite 800, Walnut Creek, CA 94596  
Roman Catholic Welfare Corp. of San Jose, 900 Lafayette St., Ste. 301, Santa Clara, CA 95050